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May 18, 1992

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Federal Communications Commission
Office of the Secretary

JILL A. STERN
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Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Comments and Application
CC Docket No. 92-76

Dear Ms. Searcy:

This letter is submitted on behalf of Ellipsat Corporation, and relates to the Commission's Public Notice in the above-referenced proceeding, released April 16, 1992. In the Public Notice, comments are invited with respect to establishment of an advisory committee to negotiate proposed regulations defining the technical and service rules for low earth orbit (LEO) satellites operating in frequencies below 1 GHz (the "small" LEOs). The Commission also invited applications for membership on the negotiating committee.

Ellipsat is generally supportive of the Commission's negotiated rulemaking approach, and applauds the Commission's efforts to develop innovative regulatory procedures to facilitate multiple, competitive entry in the satellite area. The negotiated rulemaking approach correctly recognizes that mechanisms to encourage a consensus among the affected parties, if at all possible, will achieve important public interest benefits including the expeditious introduction of new services. In this regard, the avoidance of time-consuming and expensive comparative hearings is a worthy objective.

Ellipsat has two primary concerns, however, about the Commission's Public Notice. These concerns, which are detailed below, involve (1) the suitability of a negotiated rulemaking to the "big" LEOs and (2) the potential need for participation by the big LEOs in the negotiated rulemaking committee for the small LEOs.

1. Negotiated Rulemaking for Big LEOs.

While the negotiated rulemaking approach appears to be appropriate for the small LEOs, Ellipsat has certain reservations about applying this approach to the big LEOs. The small LEOs involve a limited number of companies (only three at this time) with similar timetables, objectives and goals. Coexistence is possible because only minor technical issues must be resolved. In addition, unlike the big LEOs, the small LEOs propose non-continuous data transmissions that can be more easily coordinated than the voice transmissions that the big LEOs propose.

In contrast to the small LEOs, the big LEOs involve diverse technical, marketing and service proposals. Indeed, not all of the systems proposing to use the relevant RDSS/MSS frequency bands are LEOs; there is a geostationary satellite system applicant (AMSC) as well as a hybrid rulemaking proposal (Celsat). In addition, the applicants propose diverse technologies: TDMA, CDMA and FDMA. The big LEOs have varying milestones for their projects, ranging from 1994 to 2000. Perhaps most importantly, the big LEOs involve a situation where four LEO applicants have expressed willingness to coordinate their systems, while a fifth LEO applicant has sought band segmentation.

In this context, consensus is likely to be difficult. In fact, the negotiated rulemaking approach could serve the interests of those companies who want to stall the process. This delay could disadvantage companies like Ellipsat, who are proposing rapid deployment with an augmentation of capacity and coverage as the market develops. Delay could also harm the smaller, entrepreneurial companies who are frequently the source of technical and market innovations.

Another risk of delay is that other countries will propose mobile LEO systems that could preclude or limit the U.S. systems. It is noteworthy in this regard that the Kingdom of Tonga has filed with the IFRB for the right to use the relevant frequencies for an international mobile satellite consortium. (A copy of the Tongasat press release is attached hereto as Exhibit A.)

For this reason, a negotiated rulemaking is not necessarily appropriate for the big LEOs. At a minimum, if a negotiated rulemaking is proposed for the big LEOs, it is imperative that the Commission consider ways to encourage a consensus. For example, it may be possible to define consensus to mean a majority and not unanimity. It may also be necessary to establish a more definitive framework for the discussions.

2. Participation by Ellipsat in Advisory Committee.

In the Public Notice, the Commission invites "persons who will be significantly affected by the proposed rules" to apply for membership on the negotiated rulemaking committee. Ellipsat has no wish to complicate the work of the advisory committee by introducing an unwieldy number of new participants. On the other hand, a number of issues to be discussed by the committee could have a material impact on the big LEO proceeding. At present, there is no representation on the committee of the big LEO interests that may be significantly affected by the committee's activities.

For example, the committee's discussion of modulation methods that should be employed by the parties in order to co-exist with other satellite systems could have direct relevance to the big LEOs. Similarly, if the committee should agree upon technical and service rules applicable to LEOs, these rules could be applied to the big LEOs, either directly or by way of analogy.

For this reason, Ellipsat hereby applies for membership on the advisory committee. Ellipsat designates the undersigned counsel to represent its interests. Because of the more limited nature of Ellipsat's interest in the advisory committee (relative to the small LEOs), Ellipsat would be willing to consider other ways of protecting its interests, e.g., through participation in a sub-group, as long as any other big LEO participants were treated in the same fashion.

Respectfully submitted,

Jill Abeshouse Stern

Jill Abeshouse Stern
Counsel for Ellipsat Corporation

EXHIBIT A

FRIENDLY ISLANDS SATELLITE COMMUNICATIONS, LTD. (TONGASAT)

PRESS RELEASE

TONGASAT PROPOSES INTERNATIONAL PARTNERSHIP

FOR THE PROVISION OF GLOBAL MOBILE SATELLITE SERVICES

NUKU'ALOFA, KINGDOM OF TONGA, 24 APRIL 1992 -- TONGASAT invites commercial entities, interested in owning and operating a global MOBILE SATELLITE SERVICES (MSS) system, to participate in the formation of an international consortium.

Entities from around the world are invited to consider the advantages of forming an international commercial consortium for the provision of mobile satellite services, including telephony, data and paging, on a global basis. The system will utilize frequency allocations obtained by the Kingdom of Tonga. The consortium will not be dominated in any manner by Tonga or TONGASAT.

TONGASAT plans to facilitate the opportunity for indigenous industries in participating countries, to manufacture the hand held telephones, pagers, and interconnecting ground stations and other equipment needed to use the MSS services.

This alternative to MSS proposals dominated by a single entity or country is an endeavor by TONGASAT to stimulate a rapid installation of all facilities necessary for a global personal communications system. It is designed to benefit those most in need of the services -- the developing nations of the world.

TONGASAT plans to launch the first generation of low earth orbit (LEO) satellites in the first half of 1995 into inclined orbits, thus inaugurating the first hand-held telephone service for use by satellite telephone subscribers around the world. Since this type of service has been recognized by many leaders in the telecommunications industry as the best way to serve developing countries, as well as rural and island territories of all countries, it is appropriate that a small country, the Kingdom of Tonga, be the neutral, non-dominant focal point of this inauguration of global personal communications. All users will be glad to know that the profits of the service will go to the several commercial partners/owners in their own nations, rather than to any one large entity or country. TONGASAT will own only a small share.

The February-March 1992 World Administrative Radio Conference (WARC) allocated new frequencies for these types of services, and the Kingdom of Tonga successfully filed during March with the IFRB * for the right to use these new frequencies on a world-wide basis. This filing will enable a commercial consortium to operate and share profits with all interested investors, under the umbrella of a license held by the Kingdom of Tonga, without domination by any big country, and without majority ownership by industry or governmental entities of any one country. Thus, Tonga, through its sole authorized agent TONGASAT, will act as the catalyst for the establishment of this new type of consortium, with the goal of providing economical commercial communications services world-wide.

These new mobile satellite services will complement current maritime and aeronautical mobile communications services offered by the inter-governmental organization INMARSAT, and also will complement land-mobile services planned for North America. It is imperative that the subscribers of all participating countries, be they rich or poor, small or large, be able to make phone calls at the lowest cost possible, without any risk of cross-subsidy of similar services using larger terminals or of other satellite systems providing maritime and aeronautical and land mobile satellite links.

For the same reasons that INMARSAT was formed in the 1970's, to ensure cost-effective provision of maritime mobile satellite services, instead of allowing INTELSAT to absorb such services, TONGASAT believes that the new personal communications services using hand-held telephones should be provided by an international commercial consortium without direct government ownership. Government regulatory authorities will, of course, need to license or permit entities within their boundaries to connect the calls from hand-held units using the MSS system to the terrestrial telephone and data networks and vice versa.

The EUTELSAT and ARABSAT regional communications satellite networks were also formed outside of INTELSAT, partly to prevent draining of revenues and profits from lucrative regional high density communications links to support global thin-route services. INTELSAT continued its brilliant success in the provision of similar intercontinental global services. There was and is an adequate market for all to prosper.

TONGASAT's initiative is not intended to steal the thunder of large companies which have invested time and effort in structuring MSS -- they may join the international consortium. Those that do not wish to join will have the opportunity to make their profits by selling the telephones and other equipment needed to provide the global services. Others will provide the low earth orbit satellites at a profit. The fact that Tonga has taken the inititative should be regarded as an opportunity for those who wish to join a global, truly commercial, consortium to provide these new international services on a cooperative basis, without rules or regulations emanating from any large owner/operator or nation. In sum, TONGASAT presents a novel approach to the formation of a new global service to benefit all of mankind.

Perhaps one of the most fitting remarks in this vein, attributed to United States Ambassador Bradley Holmes, is: "Newness often is viewed as a threat rather than an opportunity". Neither Tonga nor TONGASAT can be considered a threat in the establishment of a global consortium, free of government ownership and costly and cumbersome structures, with the goal of providing a truly competitive service on a lowest cost basis to subscribers in all participating countries, as its single mission

INMARSAT *** and the United States filed earlier than the Kingdom of Tonga, for some of the newly allocated MSS frequencies, but not all. These filings were submitted on or before the conclusion of the WARC '92 in Spain. Tonga filed after the conclusion of the WARC for all the frequencies allocated by that WARC, making it possible to implement different systems with various technical parameters. Tonga also filed for systems in several circular orbit altitudes and for one elliptic orbit system. One advantage of TONGASAT's approach is that it provides

maximum flexibility for the system designers of TONGASAT international consortium satellite systems. Optimum orbital altitudes and other parameters are not yet fine tuned for a least cost system with adequate global coverage. Further system technical optimization will result in the best and most cost-effective initial satellite system for global personal communications services, using Tonga's frequency assignments and orbit altitudes and orbit inclinations, designed to cover the world. Another advantage is that the several systems designs possible under Tonga allocations will accommodate growth as demand soars in the 21st Century.

Any sovereign nation in the world, which is an ITU ** member, had equal rights to obtain the necessary Mobile Satellite Services allocation of frequencies. Nations that file first for the frequency assignments enjoy international protection against interference by other systems, filed later by other nations' telecommunications administrations with the IFRB. Because of its prompt filing, Tonga can now provide a convenient vehicle for investors and users to take advantage of and to provide these new telecommunications services, on a world-wide basis.

(*) IFRB = International Frequency Registration Board

(**) ITU = International Telecommunications Union

(***) INMARSAT officials have openly stated that its services will compete directly with MSS global services for personal communications, like the Iridium system proposed by Motorola of the United States, and will be fighting for the same customers.

FOR CONSTRUCTIVE COMMENTS AND FURTHER INFORMATION:

PLEASE CONTACT DR. MATS C. NILSON, MANAGING DIRECTOR, TONGASAT

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